

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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|--------------------------------|---|----------------------------|
| STRATAGENE CORPORATION, |) | |
| a Delaware Corporation, |) | |
| |) | |
| Plaintiff, |) | Civil Action No.: _____ |
| |) | |
| v. |) | JURY TRIAL DEMANDED |
| THIRD WAVE TECHNOLOGIES, INC., |) | |
| A Delaware Corporation, |) | |
| |) | |
| Defendant. |) | |

COMPLAINT

Plaintiff, Stratagene Corporation, for its complaint against defendant, Third Wave Technologies, Inc., alleges as follows:

Subject Matter Jurisdiction

1. This is an action for patent infringement arising from Title 35 of the United States Code. 35 U.S.C §§ 1 *et seq.* Exclusive subject matter jurisdiction over this matter is conferred upon the Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

The Parties

2. Plaintiff Stratagene Corporation ("Stratagene") is a corporation organized under the laws of the State of Delaware having its principal place of business at 11011 N. Torrey Pines Road, La Jolla, California, 92037. Stratagene is a publicly traded corporation.

3. Defendant Third Wave Technologies, Inc. ("TWT") is a corporation organized under the laws of the State of Delaware having its principal place of business at 502 S. Rosa Rd., Madison, Wisconsin 53719. TWT is a publicly traded corporation.

Venue and Personal Jurisdiction

4. Venue is proper in this forum pursuant to 28 U.S.C. § 1391(b) and (c), 28 U.S.C. § 1400(b) and the applicable law of this Court. Both parties to this action are Delaware corporations. Venue for this action is proper in this Court given that this jurisdiction is the corporate domicile of each party to this action.

The Patents-in-Suit

5. Stratagene is the owner of the entire right title and interest in United States Patent No. 6,528,254 ("the '254 patent") to Joseph A. Sorge, entitled METHODS FOR DETECTION OF A TARGET NUCLEIC ACID SEQUENCE issued March 4, 2003. Pursuant to Local Rule 3.2, a copy of the '254 patent is attached hereto as Exhibit A.

6. Stratagene is the owner of the entire right title and interest in United States Patent No. 6,548,250 ("the '250 patent") to Joseph A. Sorge, entitled METHODS FOR DETECTION OF A TARGET NUCLEIC ACID SEQUENCE issued April 15, 2003. Pursuant to Local Rule 3.2, a copy of the '250 patent is attached hereto as Exhibit B.

Allegations of Direct Infringement
(35 U.S.C. § 271(a))

7. On information and belief, TWT's Invader™ products ("the accused products") infringe one or more claims of the patents-in-suit. TWT's making, using, selling and offering for sale the accused products, constitutes willful infringement of Stratagene's patent rights in violation of 35 U.S.C. § 271(a).

8. On information and belief, TWT's willful infringement will continue unless it is enjoined therefrom.

Allegation of Indirect Infringement
(35 U.S.C. § 271(b))

9. On information and belief, TWT has been, and currently is, actively and willfully inducing others to infringe one or more claims of the patents-in-suit through its making, using, selling and offering for sale the accused products, in violation of 35 U.S.C. § 271(b).

10. On information and belief, TWT's inducement of infringement will continue unless it is enjoined therefrom.

Request for Relief

Plaintiff, Stratagene respectfully requests:

- a. Judgment that TWT directly infringes the claims of the '250 and '254 patents (35 U.S.C. § 271(a));
- b. Judgment that TWT has actively induced others to infringe one or more of the claims of the '250 and '254 patents (35 U.S.C. § 271(b));
- c. Judgment that TWT's infringement of the claims of the '250 and '254 patents is willful;
- d. A preliminary and permanent injunction against continued infringement (35 U.S.C. § 283);
- e. An award of damages to redress TWT's infringement (35 U.S.C. § 284);
- f. Increased and trebled damages for willful infringement (35 U.S.C. § 284);
- g. Its attorney fees (35 U.S.C. § 285);
- h. Its costs (Rule 54(d), Fed. R. Civ. P.); and

i. Any other relief the Court deems appropriate under the circumstances.

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